IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et. al.	§	
	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 01-CV-3624
	§	(Consolidated)
ENRON CORPORATION, et. al.	§	
	§	
Defendants.	§	

OUTSIDE DIRECTORS'[1] RESPONSE TO MOTION TO INTERVENE OF DOW JONES & CO., INC., THE NEW YORK TIMES CO., THE WASHINGTON POST, USA TODAY, THE HOUSTON CHRONICLE, AND THE REPORTERS' COMMITTEE FOR FREEDOM OF THE PRESS AND SUPPLEMENTAL MOTION TO INTERVENE OF ABC, INC.

INTRODUCTION

The rights to privacy, to due process and to a fair civil trial are constitutional rights. Nonetheless, Plaintiffs have asked the Court to order the dozens of individual and corporate defendants to produce a wide range of personal and confidential information without any protective order whatsoever, so that Plaintiffs can place this information on a public website and immediately disseminate it to the public at large.[2] Members of the media now seek leave to intervene in order to

---

[1]Outside Directors Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Jerome J. Meyer, Frank Savage, John Wakeham, Charls E. Walker, and Herbert S. Winokur, Jr. are joined in this response by John A. Urquhart, Richard B. Buy, Mark A. Frevert, Richard A. Causey, Kevin P. Hannon, Stanley C. Horton, Seven J. Kean, Mark E. Koenig, Jeffrey McMahon, Kenneth D. Rice, and Lawrence Greg Whalley.

[2]*See* Plaintiffs' Memorandum of Law in Support of Motion to Preclude the Filing or Production of Documents Subject to a Protective Order (hereinafter, "Plaintiffs' Motion") filed on September 24, 2002.

1123

echo the Plaintiffs' arguments.[3]

The Media Movants have no right to intervene for this purpose. First, Plaintiffs' Motion and the Media Movants' request to intervene are both moot. Pursuant to the Joint Motion to Enter Order Establishing a Document Depository, granted by the Court on October 30, 2002, "[a]ll documents will be governed by the order regarding confidentiality to be entered in this case."[4] Second, even if not moot, the Media Movants' position is perfectly aligned with, and adequately represented by, the Plaintiffs in this litigation. Plaintiffs have already made the same arguments, on behalf of the same interests, that the Media Movants seek to assert through their intervention. The Media Movants have no other interest in this proceeding that could justify permitting them to intervene and granting them party-status to the entire litigation.[5] Accordingly, the Outside Directors respectfully request that the Media Movants' Motion to Intervene be denied.

BACKGROUND

On September 24, 2002, Plaintiffs filed a Motion to Preclude the Filing or Production of Documents Subject to a Protective Order. Plaintiffs asked this Court to order that all defendants'

---

[3]The Motion to Intervene was filed on behalf of the following members of the media: Dow Jones & Company, Inc., the New York Times Company, the Washington Post, USA Today, the Houston Chronicle, and the Reporters' Committee for Freedom of the Press and Supplemental Motion To Intervene was filed by ABC, Inc (hereinafter, "Media Movants").

[4]Order Establishing a Document Depository at 14.

[5]The Media Movants state numerous times that they seek to intervene "for the limited purpose of being heard on [Plaintiffs' Motion]." Media Motion at 1-2; *see also* Media Brief at 1, 8. The Media Movants should not be allowed to intervene for any purpose. Should the Court grant the Media Movants intervenor status, it should indeed be only for this "limited purpose." This limited purpose of being heard on the narrow issue of confidentiality, and not joining the lawsuit as a party, should not afford the Media Movants the rights of a party namely access to the ESL service website, to the document depository, or to the discovery in this case.

personal, confidential or proprietary information produced through discovery may be immediately disseminated to the public at large. Plaintiffs stated that they sought this extraordinary relief on behalf of "absent class members, the legal and financial communities, regulatory bodies and the public at large," and based on the alleged common law and First Amendment rights of these groups.[6]

On October 15, 2002, a number of Defendants filed a response to Plaintiffs' Motion,[7] which the Outside Directors joined on October 17, 2002, pointing out that the United States Supreme Court in *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 38 (1984) rejected the very argument made by Plaintiffs. Since the Supreme Court resolved this issue in *Seattle Times,* courts have not wavered from the principle that *discovery* is not a judicial proceeding or record to which the right of public access attaches. *See, e.g., Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994).

On October 18, 2002, the Media Movants filed a Motion to Intervene for the "limited purpose of being heard on Plaintiff's Motion [sic] to Preclude the Filing or Production of Documents Subject to a Protective Order and on Defendants' Proposed Protective Orders."[8] Subsequently, on October 25, 2002, the Media Movants filed a Brief in Support of Motion to Intervene,[9] which does little more

---

[6]*See* Plaintiffs' Motion at 1, 8.

[7]*See* Certain Defendants' Response in Opposition to Plaintiffs' Motion to Preclude the Filing or Production of Documents Subject to a Protective Order (hereinafter, "Defendants' Response").

[8]*See* Motion to Intervene of Dow Jones & Co., Inc., the New York Times Co., the Washington Post, USA Today, the Houston Chronicle, and the Reporters' Committee for Freedom of the Press (hereinafter "Media Motion") at 1-2.

[9]*See* Dow Jones & Co., the New York Times Co., the Washington Post, USA Today, the Houston Chronicle, ABC, and the Reporters' Committee for Freedom of the Press' Brief in Support of Motion to Intervene (hereinafter "Media Brief").

than offer arguments on the merits of the issues for which they seek (but have not been granted) intervenor status.

The Media Movants' Motion to Intervene should be denied. The substantive issue on which the Media Movants' request to be heard has already been thoroughly briefed by the parties to the case. The prior briefing is significant in two ways. First, the Media Movants argue for exactly the same result, and on behalf of the same interests, as were argued in the Plaintiffs' Motion, a fact that precludes them from intervening under Fed. R. Civ. P. 24. Second, even if the Media Movants were allowed to intervene, their arguments are the same – and just as defective as – those made by the Plaintiffs.

ARGUMENT

A. The Media Movants Do Not Meet The Statutory Requirements For Intervention.

1. The Media Movants' Interest In The Case, If Any, Is Already Adequately Represented.

To intervene as of right under Fed. R. Civ. P. 24(a), an applicant must both 1) "have an interest relating to the property or transaction which is the subject of the action" *and* 2) "the applicant's interest must be inadequately represented by the existing parties to the suit." *See, e.g., Ford v. City of Huntsville*, 242 F.3d 235, 239 (5th Cir. 2001). It is questionable whether the Media Movants even have an "interest" for Rule 24 purposes, as Courts have required the interest to be "direct, substantial, and legally protectable." *Sierra Club v. Espy*, 18 F.2d 1202 (5th Cir. 1994) (finding legally protectable, existing contracts did constitute a valid interest). *See also, United States v. State of Mississippi*, 958 F.2d 112, 115 (5th Cir. 1992) (finding statutory right to "seek to reopen or intervene in the further implementation" of certain court orders involving children's

transportation to school was *not* legally protectable by mandatory intervention); *New Orleans Pub. Serv. Inc. v. United Gas Pipe Line, Co.*, 732 F.2d 452, 463-4 (5th Cir. 1984) (city officials and customers were not entitled to intervene in a contract dispute regarding price between electric utility and gas supplier).

Even assuming the Media Movants have an "interest," any interest they have is fully represented by the 20-page Plaintiffs' Motion, which raises the exact same issues, makes the same arguments, seeks the same result, and is on behalf of the same interests as the media. Not surprisingly, the Media Movants almost entirely ignore this fact in their pleadings. In their motion and brief in support, the Media Movants devote a total of five sentences, and cite only one easily distinguishable case, to half-heartedly argue that the Plaintiffs' motion somehow does not adequately represent the interests that the Media Movants represent. The Media Movants rely completely on language from *Doe v. Glickman*, 256 F.3d 371 (5th Cir. 2001). In *Doe*, however, the only party who could possibly have been said to already represent the intervenor's interest (like the Plaintiffs in this case) took the **contrary** position in a related lawsuit within that same year. *Id.* Here, far from taking the contrary position, Plaintiffs and the Media Movants are perfectly aligned in their efforts to make the personal, confidential and proprietary information of every defendant in this case immediately public, and subject to posting on the World Wide Web.

A cursory comparison of Plaintiffs' motion and the Media Movant's demonstrates their identity of interest. So congruent, in fact, are their interests that their arguments merely echo one another--with the Media Movants adding nothing new or different:

1. Both the Plaintiffs and the Media Movants invoke the interests of absent class members.[10]

2. Both purport to act for the public at large.[11]

3. Both recite the same "policy arguments" to support their positions,[12] including the immodest claim that a part of their role in this litigation is to try to"restore the public's confidence in the legal and accounting regimes under which publicly-held companies operate."[13]

4. Both invoke the right of public access to trials, and both dismiss the fact that the Supreme Court in *Rhinehart*, 467 U.S. at 38, held that pretrial discovery proceedings are not ones to which the right of public access attaches.[14]

5. Both seek identical, extraordinary relief; namely, that there be no protective order at all governing the production of information by Defendants--even though none of them has been found liable for anything and the claims against them have yet to survive a motion to dismiss.

In short, Plaintiffs and the Media Movants take the position that *merely because they have been sued*, the Defendants have lost any right of privacy. This astonishing, "Queen of Hearts" approach[15] is at odds with the Constitution and is unsupported by even a single one of the cases or statutes cited by Plaintiffs or the Media Movants. *See infra* this Part.

The Media Movants sole *attempt* to explain why Plaintiffs' do not adequately represent their

---

[10]*Compare* Plaintiffs' Motion at 12 *with* Media Motion at 6.

[11]*Compare* Plaintiffs' Motion at 8 *with* Media Motion at 6.

[12]*Compare* Plaintiffs' Motion at 2 *with* Media Motion at 12.

[13]Plaintiffs' and the Media Movants appear to believe that the efforts of the Securities Exchange Commission, the Department of Justice and any number of other public investigations by Congressional and state regulators are not up to this task.

[14]*Compare* Plaintiffs' Motion at 8 *with* Media Motion at 12.

[15]*Cf.* L. Carroll, Alice's Adventures in Wonderland at 12 (In which the Queen of Hearts proclaims, "Sentence first--verdict afterwards.").

interests is in the form of speculation that the rights the Media Movants seek to protect are "access rights held by the media and the public – [that are] rights potentially broader than those represented by Plaintiffs."[16] In reality, this purported interest is not broader than Plaintiffs'. Instead, it is precisely the *same* interest--as Plaintiffs' brief makes clear:

> [T]he realities of this case establish an overwhelming necessity that these proceedings be open to the full review and scrutiny of the *media*, investors, absent class members, other branches of government, scholars and historians.

Plaintiffs' Motion at 8 (emphasis added).

The Media Movants thus cannot demonstrate that their interests are not adequately represented by Plaintiffs, a showing required before intervention of right may be granted. Fed. R. Civ. P. 24. Recognizing that they have not made the required showing, the Media Movants instead argue that they should be excused from doing so, ostensibly because this is only a "minimal burden." *See* Media Motion at 7. With respect, this is not the law in the Fifth Circuit:

> Although the applicant's burden is minimal, it cannot be treated as so minimal as to write the requirement completely out of the rule. When...the parties seeking to intervene have the same ultimate objective as the parties to the suit, the existing parties are presumed to represent adequately the parties seeking to intervene unless those parties demonstrate inadequacy of interest, collusion, or nonfeasance.

Cook v. Powell Buick, Inc., 155 F.3d 758, 762 (5th Cir. 1998) (affirming denial of motion to intervene, based on adequate representation) (citing *Cajun Elec. Power Co-op, Inc v. Gulf States Utilities, Inc.*, 940 F.2d 117, 120 (5th Cir. 1991) (finding representation was already adequate, despite intervention applicant's arguments that it would present more information than the original party on the common issue in the case). *See also, United States v. Mississippi*, 958 F.2d 112, 115

---

[16]Media Motion at 7.

(5th Cir. 1992) (refusing to find inadequate representation, as intervention applicant failed to show adverse interests or bad faith on the part of the original party); *Bush v. Viterna*, 740 F.2d 350, 355 (5th Cir. 1984) (finding adequate representation due to common objectives in case, namely to generally uphold the present standards and practices of entity involved in the case).

The very cases cited by the Media Movants in their motion demonstrate that some form of different interest is required before intervention as of right may be granted:

- *Ford v. City of Huntsville*, 242 F.3d 235, 241 (5th Cir. 2001) (intervention applicant opposed confidentiality order that was *agreed to* by original parties).
- *Stallworth v. Monsanto Co.*, 558 F.2d 257, 268 (5th Cir. 1977) ("neither the plaintiffs nor [defendant] have either voiced the [intervention applicant's] concerns or expressed a desire to do so).
- *Sierra Club v. Espy*, 18 F.2d 1202, 1208 (5th Cir. 1994) (intervention candidates offered specific evidence, a policy letter written by the original party, demonstrating the differences between the party's position and their own).

Here, there is no difference of interest. The Plaintiffs and the Media Movants invoke the same interests and share the same objective: Full disclosure of all discovery materials without regard to the defendants' constitutional rights to privacy and due process. On these facts, and on the basis of clear Fifth Circuit authority, the Media Movants have not met their burden to establish their right to intervene in these proceedings. Their motion should be denied.

2. The Media Movants Offer No Support for their Request for Permissive Intervention Under Rule 24(b).

As an afterthought, in an argument not set out in their motion for leave to intervene, the Media Movants suggest that the Court should grant them permissive intervention because "their claim and the claim of the parties involve a common question of law." *Media Brief* at 8. They offer nothing more in support than two conclusory sentences, supported by no case or statute, in which

they assert that the requirements for permissive intervention have been met. *Id.*

More than this *ipse dixit* is required for the grant of permissive intervention. "Permissive intervention requires: (1) an independent ground for jurisdiction; (2) a timely motion; and, (3) a common question of law or fact between the movant's claim or defense and the main action." *United States v. Washington*, 86 F.3d 1499, 1506-07 (9th Cir. 1996). *See also State of Texas v. United States Dept. of Energy*, 754 F.2d 550, 552 (5th Cir. 1985). Even were this motion timely, the Media Movants' suggestion that they be permitted to intervene fails on two grounds: (a) lack of independent jurisdiction; and, (b) the absence of a common question between the Media Movants' ostensible First Amendment claims and the securities statutes that are at issue in *Newby*.

As we discuss in greater detail below, there is no constitutional right of public access to pretrial discovery proceedings. *Rhinehart*, 467 U.S. at 38 (a litigant "has no First Amendment right of access to information made available only for the purpose of trying his suit."). As a result, there is not even an arguable constitutional violation that could be (although it has not been) alleged here by the Media Movants. In the absence of this independent jurisdictional ground, permissive intervention is not appropriate. *Washington*, 86 F.3d at 1506-07.

The Media Movants also do not have a claim or defense "in common with" the main action in *Newby*. The main action in *Newby* involves allegations of federal securities fraud. The Media Movants' ostensible constitutional claims (were they actually to seek to assert them) are not at all implicated in *Newby*. As a result, there is no common question with the *Newby* action. Instead, there is only a common desire (shared by the Media Movants and the Plaintiffs) to strip the defendants of two important constitutional rights: (a) their right to privacy; and (b) their right to be heard before they are pilloried publicly with private information obtained in the discovery process--

information that will be made available not because the defendants desire to share it but, rather, because they have had the misfortune to be sued as defendants in a high profile case. Accordingly, the Media Movants have not – and cannot – make the required showing for permissive intervention under Rule 24(b).

The Media Movants have not satisfied the Rule 24(b) requirements for permissive intervention, as demonstrated above. However, even in cases where Rule 24(b)'s requirements *are* satisfied, the Court has broad discretion to consider "whether the intervenors' interests are adequately represented by other parties." *Kneeland v. National Collegiate Athletic Assoc.*, 806 F.2d 1285, 1289 (5th Cir. 1987). As demonstrated conclusively in Part A.1. above, the Media Movants merely echo the Plaintiffs arguments. Therefore, their request for permissive intervention under Rule 24(b) must be denied.

The grant of permissive intervention rests within the sound discretion of the trial court. In fact, "this circuit has never reversed a denial of permissive intervention." *Kneeland,* 806 F.2d at 1289-90.[17] The defendants have not been found liable for any wrongdoing. Their settled constitutional rights to privacy, due process and a fair trial cannot lightly be dismissed in the favor of a non-existent "right" of access to pretrial discovery. For these reasons, and because the Media Movants have failed entirely to meet their burden under rule 24(b), the Media Movants' requests for permissive intervention should also be denied.

B. The Public's Legal Right of Access to "Judicial Proceedings and Records" Does Not Extend to Discovery Documents.

Though the primary issue is the Media Movants' misplaced attempt at intervention, the

---

[17]No Fifth Circuit decision subsequent to *Kneeland* has reversed a denial of permissive intervention.

Media Movants have also failed to support their (premature) argument that the public has a right of access to pretrial discovery proceedings.[18] As was made clear in the Defendants' Response in Opposition to Plaintiffs' Motion to Preclude the Filing or Production of Documents, there is no constitutional right of access to pretrial discovery proceedings. In particular:

- Almost 20 years ago, in *Rhinehart*, the United States Supreme Court rejected the arguments Plaintiffs make here and held unequivocally that a litigant "has no First Amendment right of access to information made available only for the purposed of trying his suit." *Rhinehart*, 467 U.S. at 38 (1984).[19]

- The *Leucadia* case, cited by Plaintiffs, actually undermines their arguments. *See Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157 (3d Cir. 1993). In it, the Third Circuit confirmed that any claimed right of access applies only to judicial records, and emphasized that pre-trial discovery products "are not public components of a civil trial," are not "open to the public," and "are conducted in private as a matter of modern practice." *Id.* at 164 (citing *Seattle Times*, 467 U.S. at 33).[20] *Leucadia*, far from supporting the Media Movants' arguments, actually establishes that there is no constitutional right of access to pretrial discovery.

- The discovery process itself is a "matter of legislative grace" and, therefore, a litigant simply has "no First Amendment right of access to information made available only for purposes of trying his suit." *Seattle Times*, 467 U.S. at 32.[21]

The Media Movants, like the Plaintiffs, cannot gainsay the clear holding in *Rhinehart*: A protective order restricting the use of documents exchanged in discovery "does not offend the First Amendment." *Id.*, 467 U.S. at 37. There is, therefore, no *constitutional* reason why this Court cannot grant a protective order. Quite the contrary: Courts have routinely restricted access to

---

[18]Many of the arguments in this section are made in greater detail in Defendants' Response in Opposition to Plaintiffs' Motion to Preclude the Filing or Production of Documents Subject to a Protective Order. We incorporate those arguments in this opposition as if set forth in full.

[19]*See also* Defendants' Response at 2.

[20]Defendants' Response at 3-4.

[21]Defendants' Response at 6.

documents that might be used to "gratify spite or promote scandal, and files that might 'serve as reservoirs of libelous statements for press consumption.'" *United States v. Amodeo,* 44 F.3d 141, 146 (2d Cir. 1995) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 598 (1978).[22] The Court is aware of the firestorm of press coverage that has engulfed the collapse of Enron. In this environment, the Court cannot lose sight of the fact that the constitutional rights of innocent people are at stake, people whose wrongdoing remains to be (and we believe will never be) proved. To afford the press unfettered access to pretrial discovery, and to these individuals' private documents, would throw gasoline on this fire. The resulting conflagration might well consume the defendants' constitutional protections, including their rights to a fair civil trial and an unbaised jury pool.

The Media Movants' also prove too much with their attempt to differentiate between future discovery and materials which have already been produced to certain United States government agencies. As a result of hearings conducted into Enron's alleged destruction of documents, the Court is well aware of the fact that Enron "produced" documents to the government under what can only be described as extraordinary circumstances. In fact, Enron actually invited agents of the Federal Bureau of Investigation into its offices and the agents simply took (often without leaving copies for Enron), the documents and computers that they wanted to take:

> Your Honor, I don't even think we have those [documents the FBI seized]. [T]here's a much larger universe of documents that are not necessarily even tied to the issues involved in this case. When you think about what the FBI went in and did, it picked up who knows what, but certainly it is reasonable to believe that it would be well-beyond the scope of what would be considered relevant in connection with this.

See generally Transcript of Hearing February 25, 2002 at 52 (representation of counsel to Enron concerning Enron's "production" to the Federal Bureau of Investigation). Enron was not able to, and

---

[22]Defendants' Response at 14.

did not, screen those documents for confidentiality, for privilege or for trade secrets--they simply turned them over wholesale. *Id.* To suggest that this effected a waiver of various individuals' constitutional rights to maintain information in confidence is ludicrous,[23] so much so that the Media Movants could find no case or authority to support this sweeping claim. Second, there is clearly more at stake in this confidentiality debate, including the rights of the many individuals whose private personal information may have been produced to the government by Enron, without notice, and without an opportunity to be heard before the documents in question were handed over wholesale as part of "Enron's production." Finally, the Media Movants' broad assertion that these documents were "produced to the government with no assurance of confidentiality," is just that – an assertion. The Media Movants offer no evidence that the government has not, in fact, continued to hold Enron's documents in confidence in tacit recognition of the fact that Enron literally had no opportunity to preserve the confidentiality of its documents before they were seized by the government. *Id.*

CONCLUSION

For all of these reasons, the Media's Motion to Intervene should be denied.

---

[23]Media Brief at 27.

Respectfully submitted,

GIBBS & BRUNS, L.L.P.

BY: Robin Gibbs KP by permission

Robin C. Gibbs
T.B.A. No. 07853000
Kathy D. Patrick
T.B.A. No. 15581400
Jeremy L. Doyle
T.B.A. No. 24012553
Aundrea K. Frieden
T.B.A. No. 24034468
1100 Louisiana, Suite 5300
Houston, Texas 77002
Telephone: (713)650-8805
Facsimile: (713)750-0903

ATTORNEYS FOR DEFENDANTS ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, JOE H. FOY, WENDY L. GRAMM, ROBERT K. JAEDICKE, CHARLES A. LEMAISTRE, JOHN MENDELSOHN, JEROME J. MEYER, FRANK SAVAGE, JOHN WAKEHAM, CHARLS E. WALKER, AND HERBERT S. WINOKUR, JR.

GOLDEN & OWENS, L.L.P.

By: H. Bruce Golden KP by permission

H. Bruce Golden
State Bar No. 08081500
S.D. Tex. No. 8314
1221 McKinney Street, Suite 3600
Houston, TX 77010
Phone: (713) 223-2600
Fax: (713) 223-5002

ATTORNEYS FOR DEFENDANT JOHN A. URQUHART

NICKENS, KEETON, LAWLESS, FARRELL & FLACK, L.L.P.

BY: Jacks C. Nickens /KP by permission
Jacks C. Nickens
State Bar No. 15013800
600 Travis, Suite 7500
(713) 353-6660
(713) 571-9652 (fax)
Houston, Texas 77002

ATTORNEY FOR DEFENDANTS RICHARD B. BUY, MARK A. FREVERT, RICHARD A. CAUSEY, KEVIN P. HANNON, STANLEY C. HORTON, STEVEN J. KEAN, MARK E. KOENIG, JEFFREY MCMAHON, KENNETH D. RICE, AND LAWRENCE GREG WHALLEY

Presented by:

GIBBS& BRUNS, L.L.P.

By: Robin C. Gibbs
AKF by permission

Robin C. Gibbs
State Bar No. 07853000
S.D. Tex. I.D. No. 4790
1100 Louisiana Street, Suite 5300
Houston, Texas 77002
Telephone: (713) 650-8805
Facsimile: (713) 750-0903

ATTORNEY-IN-CHARGE FOR DEFENDANTS
Robert A. Belfer, Norman P. Blake, Ronnie C. Chan,
John H. Duncan, Wendy L. Gramm, Joe H. Foy,
Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn,
Jerome J. Meyer, Frank Savage, John Wakeham,
Charls E. Walker, and Herbert S. Winokur, Jr.

OF COUNSEL:

GIBBS & BRUNS, L.L.P.
Kathy D. Patrick
State Bar No. 15581400
Jeremy L. Doyle
State Bar No. 24012553
Aundrea K. Frieden
State Bar No. 24034468
1100 Louisiana Street, Suite 5300
Houston, Texas 77002
Telephone: (713) 650-8805
Facsimile: (713) 750-0903

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OUTSIDE DIRECTORS' RESPONSE TO MOTION TO INTERVENE OF DOW JONES & CO., INC., THE NEW YORK TIMES CO., THE WASHINGTON POST, USA TODAY, THE HOUSTON CHRONICLE, AND THE REPORTERS' COMMITTEE FOR FREEDOM OF THE PRESS AND SUPPLEMENTAL MOTION TO INTERVENE OF ABC, INC.** and **[PROPOSED] ORDER** has been served by sending a copy via http://www.esl3624.com/ on this the 6th day of November, 2002.

I further certify that a copy of the foregoing has been served via Federal Express on the following parties, who do not accept service by electronic mail on the 6th day of November, 2002:

Thomas G. Shapiro
Shapiro Haber & Urmy LLP
75 State Street
Boston, MA 02109
Telephone: (617) 439-3939
Facsimile: (617) 439-0134
Attorneys for Plaintiffs van de Velde

William Edward Matthews
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, Texas 77002
Telephone: (713) 276-5500
Facsimile: (713) 276-5555
Attorneys for Defendants Anderson Worldwide, S.C., Roman W. McAlindan and Philip A. Randall

Gregory A. Markel
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Attorneys for Defendant Bank of America Corp.

Dr. Bonnee Linden, pro se
1226 W. Broadway, P.O. Box 114
Hewlett, NY 11557
Telephone: (516) 295-7906

Robert C. Finkel
Wolf Popper LLP
845 Third Ave.
New York, NY 10022
Telephone: (212) 759-4600
Facsimile: (212) 486-2093
Attorneys for Plaintiff van de Velde

Amelia Toy Rudolph
Sutherland Asbill & Brennan LLP
999 Peachtree Street, N.E., Ste. 2300
Atlanta, GA 30309
Telephone: (404) 853-8000
Facsimile: (404) 853-8806
Attorneys for Defendant Roger D. Willard

Harvey G. Brown
Orgain Bell & Tucker, LLP
2700 Post Oak Blvd., Ste. 1410
Houston, Texas 77056
Telephone: (713) 572-8772
Facsimile: (713) 572-8766
Attorneys for Defendants Andersen-United Kingdom and Andersen-Brazil

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall St., 21st Floor
New York, NY 10004
Telephone: (212) 510-0500
Facsimile: (212) 668-2255

Aundrea K. Frieden

Aundrea K. Frieden